

SCHEDULE [] Article []

PROTECTIVE PROVISIONS

PART []

FOR THE PROTECTION OF PEEL NRE LIMITED

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Peel and, in the case of paragraph 15 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

2. In this Part of this Schedule—

"access road" means the access road proposed to be constructed by Peel over plots [XXX] as identified on the Land Plans;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"Network Rail Standards" means all documents adopted by Network Rail that specify requirement and provide guidance directed towards securing the safe and efficient operation of the rail infrastructure;

"Peel" means Peel NRE Limited (company number 04480419), whose registered office is at Venus Building, 1 Old Park Lane, Traffordcity, Manchester, M41 7HA and any associated company of Peel NRE Limited which holds property;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of relevant property;

"relevant property" means:

- (a) any land, works, apparatus and equipment belonging to Peel; and
- (b) any easement or other property interest held or used by Peel or a tenant or licensee of Peel for the purposes of such land, works, apparatus or equipment;

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, relevant property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (power to maintain the authorised development) in respect of such works.

3. (1) The undertaker must not exercise the powers conferred by—

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- ~~(a)~~ article 3 (~~development consent etc. granted by the Order~~);
- ~~(b)~~(a) article 5 (power to maintain the authorised development);
- ~~(e)~~(b) article 19 (discharge of water);
- ~~(d)~~(c) article 20 (maintenance of drainage works);
- ~~(e)~~(d) article 21 (authority to survey and investigate the land);
- ~~(f)~~(e) article 22 (protective work to buildings)
- ~~(g)~~ article 23 (~~removal of human remains~~);
- ~~(h)~~(f) article 24 (compulsory acquisition of land);
- ~~(i)~~(g) article 26 (compulsory acquisition of rights and restrictive covenants);
- ~~(j)~~(h) article 27 (statutory authority to override easements and other rights);
- ~~(k)~~ article 29 (~~private rights~~);
- ~~(l)~~(i) article 31 (acquisition of subsoil or airspace only);
- ~~(m)~~(j) article 34 (temporary use of land for carrying out the authorised development);
- ~~(n)~~(k) article 35 (temporary use of land for maintaining the authorised development);
- ~~(o)~~ article 36 (~~statutory undertakers~~);
- ~~(p)~~(l) article 39 (felling or lopping of trees and removal of hedgerows);
- ~~(q)~~ article 40 (~~trees subject to tree preservation orders~~);
- ~~(r)~~(m) the powers conferred by section 11(3) (power of entry) of the 1965 Act;
- ~~(s)~~(n) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- ~~(t)~~(o) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
- ~~(u)~~(p) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;


in respect of any relevant property unless the exercise of such powers is with the consent of Peel.

(2) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, ~~article 41 (statutory undertakers), or article 289 (statutory authority power to override easements and other rights or private rights of way) or article 27 (private rights over land~~, in relation to any right of access of Peel to relevant property, but such right of access may be diverted with the consent of Peel.

(3) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any relevant property, or extinguish any existing rights of Peel in respect of any third party property, except with the consent of Peel.

(4) Where Peel is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld or delayed but may be given subject to reasonable conditions. If by the end of the period of 14 days beginning with the date on which consent is requested Peel has not intimated their refusal together with the grounds of any such refusal, Peel will be deemed to have given its consent.

(5) In the event that Peel has constructed the access road prior to the undertaker commencing that part of Work No. 3 to which the access road relates, the undertaker must not exercise the powers conferred by the provisions listed in sub-paragraph (1) over the access road, provided that Peel has granted the undertaker all necessary rights of access required by the undertaker.

4. (1) The undertaker must before commencing construction of any specified work supply to Peel proper and sufficient plans of that work for the reasonable approval of Peel and the specified work must not be commenced except in accordance with such plans as have been approved in writing by Peel or settled by arbitration under article 49  (*arbitration*).

(2) The approval of Peel under sub-paragraph (1) must not be unreasonably withheld or delayed, and if by the end of the period of ~~28~~ 14 days beginning with the date on which such plans have been supplied to Peel and Peel has not intimated their disapproval together with the grounds of any such disapproval of those plans, Peel will be deemed to have approved the plans as submitted.

5. (1) Any specified work must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 4;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of Peel;

(c) in such manner as to cause as little damage as is possible to relevant property; and

(2) If any damage to relevant property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Peel all reasonable and proper expenses to which Peel may be put and compensation for any direct loss which it may sustain by reason of any such damage, interference or obstruction. provided that the undertaker shall not be liable in relation to any consequential or indirect loss.

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(3) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Peel or its servants, contractors or agents or any liability on Peel with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

6. (1) The undertaker must pay to Peel all reasonable and proper costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be ~~occasioned to~~ ~~or~~ reasonably incurred by Peel —

(a) by reason of the construction, maintenance or operation of a specified work or the failure of such a work; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

(c) in respect of any damage caused to or additional maintenance required to relevant property.

and the undertaker must indemnify and keep indemnified Peel from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission.

(2) Peel must –

(a) give the undertaker reasonable written notice of any such sums referred to in sub-paragraph (1) as soon as reasonably possible after Peel become aware of the same;

(b) ~~not make any~~ without the prior consent of the undertaker; ~~and~~

(c) take all reasonable steps to mitigate any liabilities; and

(d) keep the undertaker informed and have regard to the undertaker's representations in relation to any such sums referred to in sub-paragraph (1).

7. (1) The undertaker must consult with Peel prior to submitting any CTMP to the relevant planning authority for approval in accordance with Requirement 6. The undertaker will provide a draft CTMP to Peel no later than 30 days prior to submission, and confirm to Peel the intended date of submission at the same time. Peel may make representations on the draft CTMP to the undertaker no later than 14 days prior to the notified intended date of submission. The undertaker will have due regard to any representations timeously made by Peel in finalising the CTMP for submission.

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8. (1) The undertaker will procure that in carrying out Work No. 4 at Plots 1-19, 1-20, 1-22, 1-23 and 1-24, as identified on the Land Plans, all relevant Network Rail Standards (as in force when the works are being carried out) shall be complied with.

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